



**RACIAL JUSTICE, REPARATIONS AND AFFIRMATIVE ACTION:
RESISTING SUPREME COURT RACIST FANTASIES AND FIATS**

Los Angeles Sentinel, 07-06-23, p.B-1

DR. MAULANA KARENGA

AT THE OUTSET, LET ME BEGIN BY REASSURING us and our opponents that regardless of the recent racist ruling of the Supreme Court to end affirmative action, this is not the end of our life or our struggle. Indeed, we have clearly weathered worst winters of White racism and supremacy and have repeatedly stood up defiantly in the coffins of oppression designed for our social death and continued our awesome and toll-taking march toward freedom. Our adaptive vitality, resilience and resourcefulness are legendary and long lasting. And though we might tire of repeatedly fighting what seems to be the same battle, we know as our foremother, Nana Ella Baker, taught, “we who want freedom cannot rest” until it is achieved and secured.

Whatever religious or rational claims they might make about law and life, when it comes to the reality of racism and the relevance of race, the White conservative majority of the Supreme Court seems to still believe in practicing and promoting some strange species of White magic, trying to make the real, unreal; the irrational, rational; the immoral, moral; and the unjust, just, by both fantasizing and fiat, arbitrarily and literally saying, let it be done regardless. Indeed, their ruling against affirmative action is judicial imposition of racial fantasy by fiat, ghost writing and ruling for its MAGA mates and minions, legalizing injustice in the appropriated and abused name of justice, and denying the vicious and insidious reality of racism while practicing it and encoding it in law. It is an enactment of a key Kawaida definition of racism - turning racial hatred and hostility into public policy and socially sanctioned practice.

For regardless of the ideological mystification and manipulation, the modified choir robes, the sitting on high perches and the legal pontifications, this is not simply a fatal attack on affirmative action, it is also most definitively a direct attack on Black people themselves, regardless of its effect also on other peoples of color. For it was a targeted attack, not only on our access and opportunities for education, but also on our life chances and our rightful aspirations to break the visible and invisible bonds of White supremacy and overcome the persistent, pervasive and perverse realities of racism. And it is closing yet another door on us, confiscating and breaking another tool for us to secure justice and occupy critical social space vital to making a living and a meaningful life.

Furthermore, the decision represents a hypocritical and vulgar mode of valuing of life, allowing military academies the right to use race to give us access and opportunity to enter and be educated for the killing fields of war mongering and war making, but denying us the same access to higher education institutions which our honored ancestors called “houses of life”. For they were considered sites of education for life, for well-being and flourishing. In addition, the rank odor and low order of racist reasoning is augmented and further highlighted by the fact that White affirmative action was neither touched on or talked about. I speak here of the historical race and class consideration given to Whites as Whites, given to sons and daughters of donors and alumni, athletes, veterans and those with racial network connections not available to Black people or other peoples of color.

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The fantasy and fiction of race neutrality, indifference to race and blindness to color and public policy advocated by the conservative majority is neither neutral, indifferent nor blind. Both the discourse and decision-making on race is always mainly directed toward Black people, regardless of its implications for other peoples of color. In virtually every case of the plethora of poster characters for all that's wrong and needs to be corrected in the racist mind is somehow rooted in and related to the troubling presence and artificial problem of Black people. Indeed, at the heart of racism is the vicious and violent problematization of Black people as our forefather, Nana W.E.B. DuBois, noted.

It is important to note here that this represents a culmination of a counter progressive push which began with the establishment of affirmative action through executive orders. Affirmative action was a hard-won gain of the Black Freedom Movement in its civil rights phase. It put in place policies and practices directed toward expanding access and opportunities for Black people, other people of color and women in education, employment and contracting. Born of earnest and ongoing struggle, the policy represented and required a moral and political shift away from false and fantasized views and contentions that you could be neutral, indifferent and blind toward race and racism.

The rationale for these efforts were first seen as both social and racial justice correctives and a reparative justice measure. It was posed as positive measures needed to deal with current and ongoing discrimination which denied access and opportunities to enter *critical social space* - political, economic, educational, medical, legal, and cultural space - indispensable to wealth, power, vital knowledge and skills, representation

and well-being. And as a reparative justice measure it was understood as positive actions needed to compensate for the cumulative effects of intentional and unintentional discrimination and oppression. The reasoning was that not to consider race to correct racial injustice when race has been used to limit life conditions and life chances of Black people is to clearly put them at a severe disadvantage and make a mockery of the concept and claim of justice and equality.

But with *Bakke* (1978), the first Supreme Court challenge to affirmative action and later *Grutter* (2003), affirmative action is discussed and decided, not as a clear and compelling case of justice, let alone racial justice for us. Instead, it was discussed, debated and decided as a compelling state interest in diversity, diversity as democratic inclusion and intellectual and experiential enrichment. Now, there are clearly grounds for such arguments, but the problem is that they were not added to the original argument for justice, but became a substitute for justice, now mute, and perhaps signaled by references to equity, again, an important category of concern, but not to be substituted for the foundational demand of justice.

This shift of emphasis in discussion and decision-making from justice, especially racial justice as a compelling state interest to diversity as a state compelling interest, as I have argued elsewhere, had several problematic effects, especially the tendency to make less clear and compelling our rightful claim and demand of justice as an oppressed and grievously injured people. Instead, it tended to be posed less as a demand for justice and more of a legal concession, as an act of *noblesse oblige* by the powers-that-be who set the limits of their allowance and their time of tolerance. In addition, this focus on diver-

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sity tended to overlook and emphasize less even diversity as an issue of justice and focused instead on relational issues and benefits to Whites, euphemistically called society.

None of this is to say diversity is a negative category, for it is indeed, as noted, a justice issue also. But given the racial disadvantages, oppression and exclusion we have suffered historically and continue to suffer racially, justice as a particular and equitable remedy must also remain a compelling moral and societal interest. But the question now is ever and always, what is to be done? And the answer is always resistance, righteous and relentless struggle, until there is a victory of an inclusive freedom, justice, equality and shared good for everyone and the world. Indeed, these policies of denial of justice were already in many states and this decision by this Court underscores and increases the need for reparations and reparative justice. It is a clarion call for us to continue the struggle, keep the faith and hold the line.

It is a reaffirmation of our ongoing need to expand our political education, mobiliza-

tion, organization and confrontation at every level. For again, it's not simply a question of education, but of life, disadvantage and death, and we must not, ourselves, be negligent with only episodic anger and engagement. We must build multiracial alliances on common ground based on mutual respect, mutual support and mutual benefit. Colleges and universities, law and medical schools, and corporations must be urged and compelled to continue and expand their equity, diversity and inclusion policies with added emphasis on justice.

IN SUMMARY, AS WE ARE ACCUSTOMED to saying, in the midst of the pathology and perversity of oppression, there is no reliable remedy except resistance; no strategy worthy of its name that does not privilege and promote struggle; and no way forward except across the battlefield for a better world, a world of justly and equitably shared human good and the well-being of the world and all in it. ▲

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